

**Before the
Commission on Common Ownership Communities
Montgomery County, Maryland**

In the Matter of:

The Brandermill Association, Inc.

Complainant,

v.

Marsheela Wells

Respondent

Case No. 42-06
February 13, 2007

DECISION AND ORDER

The above-entitled case came before the Commission on Common Ownership Communities for Montgomery County, Maryland, for hearing and arguments on November 2, 2006, pursuant to Sections 10B-5(i), 10B-9(a), 10B-10, 10B-11(e), 10B-12, and 10B-13 of the Montgomery County Code. The hearing panel has considered the testimony and evidence presented, and finds, determines, and orders as follows:

Background

The Brandermill Association, Inc. (Complainant), filed a complaint with the Office of Common Ownership Communities on June 21, 2006. Complainant alleged:

1. The residential unit owned by Marsheela Wells (Respondent) and located at 20018 Apperson Place, Germantown, Maryland, is under the authority of Complainant to “require any person to take any action, or not take any action, involving a unit.”
2. A portion of Respondent’s unit is missing siding.
3. Respondent is responsible for replacing the missing siding.

Findings of Fact

On March 13, 2006, Complainant sent Respondent a letter notifying Respondent of the missing siding and requirement to replace the siding. Respondent did not reply. On April 7, 2006, Complainant sent Respondent a “Second Notice of Violation” letter notifying Respondent of the missing siding and requirement to replace the siding. Respondent did not reply. On an unknown date between April 7 and June 21, 2006, Complainant sent Respondent a “Final Notice of Violation” letter notifying Respondent of the missing siding, the requirement to replace the siding, and Complainant’s right to file a complaint with the Office of Common Ownership Communities. Respondent did not reply. On June 21, 2006, Complainant filed a complaint with the Office of Common Ownership Communities. Respondent was sent a summons to appear at a

hearing scheduled for November 2, 2006, and was asked to reply. Respondent did not reply but did appear at the hearing.

Complainant presented evidence of siding missing from Respondent's unit through a picture taken November 1, 2006, and testimony of witnesses who had viewed the unit on November 1 and November 2, 2006. Complainant also presented documentation indicating Respondent is responsible for maintaining the unit's siding. Respondent stated that: the siding is missing from her unit as described; she is responsible for its replacement; and she had received the letters from Complainant. Respondent stated that she did not have sufficient financial resources to replace the siding.

Complainant requested that the panel order Respondent to replace the siding within thirty (30) days and reimburse Complainant \$1,850.00 in legal fees.

Discussion

The basic facts of this case are not in dispute. Complainant provided evidence of Respondent's failure to maintain the exterior of her unit in good repair. Complainant also provided evidence of Respondent's responsibility for repairing the siding. Respondent did not refute this evidence.

The panel agrees that Respondent is responsible for repairing the missing siding on her unit

At the conclusion of the hearing, the parties met briefly and indicated they might be able to work out a settlement. The panel invited the parties to submit a consent order but none has been received.

Request for Attorney's Fees

At the conclusion of the hearing, the Complainant also requested that the Hearing Panel award it \$1850.00 as its reasonable attorney's fees for its successful prosecution of its complaint. Chapter 10B, Section 13(d), allows the Commission to award attorney's fees to a party if the other party has filed a frivolous dispute, maintained a dispute in bad faith, unreasonably refused to accept mediation of the dispute, or substantially delayed the resolution of the dispute without good cause. In this case, the facts show that the Respondent never answered the complaint or participated in any way in the dispute resolution process until she attended the public hearing.

The issue of whether the failure to respond to a complaint or to participate in its resolution meets the required standards of Section 10B-13 (d) (1)-(3) was answered by the Commission in the case of *Longmead Crossing Community Services Association v. Venson*, No. 04-06 (June 14, 2006). In that case, the Respondent not only failed to answer the complaint or participate in the resolution process, but failed to attend the public hearing as well. Commissioner Fleischer, writing for the panel, wrote that:

With respect to Respondent's conduct, the Panel concludes that Respondent did not act frivolously, unreasonably or in bad faith, nor did she delay or hinder the dispute resolution process; she simply ignored it. Additionally, the Panel cannot conclude that Respondent *unreasonably* refused to accept or participate in mediation because the Panel has no evidence as to Respondent's circumstances and does not know whether Respondent's non-participation was reasonable or not.

In short, the Panel reads Code Section 10B-13(d) as requiring some affirmative misconduct on a party's part in order to award fees; total inaction is not covered by the Code section.

The Code also allows the Commission to award attorney's fees "if an association document so requires and the award is reasonable under the circumstances," Section 10B-13(d). The Complainant has not brought any such provision in its governing documents to our attention. Our own review of the evidence shows the following:

1. in the Declaration of Covenants, Section 6.6 (Complainant's Exhibit 1, page 24), there is a provision for the imposition of the Association's attorney's fees against a homeowner who fails to pay the annual or special assessments;
2. in the same document, Section 8.8.2 (page 30), allows the Association to enter on a member's property to remove an architectural violation, and provides further that if it does so the member is liable to the Association for its costs in doing so "to the same extent that he is liable for an Assessment. . . ."
3. The Association's "Architectural Regulations and Policy" (Complainant's Exhibit 2) has a section on "Disputes and Violations" (page 5 of the Exhibit). Under subsection "D" of this section the Association has the right to deny pool privileges to any unit owner who is currently in violation of the architectural rules. Subsection "E" allows the Association to cure the violation and to bill the unit owner for "the costs incurred in correcting such violation." Subsection "F" provides that "[u]pon correction of the violation and reimbursement to the Association of any expenses incurred as a result of said violation, including but not limited to, fines, court costs, legal fees and costs incurred to correct such violation, the owner's rights to use the community facilities will be reinstated and any liens will be released."

These are the only references in the association documents that the panel has been able to locate which bear on the issue of attorney's fees.

A major rule of contract interpretation is that "where a contract is ambiguous or of doubtful construction, it will be construed most strongly against the party who prepared it." 5A MARYLAND LAW ENCYCLOPEDIA, *Contracts*, Section 87 (2001). The documents referred to above were prepared either by the developer or by the Association itself, and not by the Respondent. The first two sections cited refer either to the collection of delinquent assessments or to the Association's right physically to enter on the private property of the unit owner and remove a violation. Neither section applies here because this is not an action to collect assessments nor has the Complainant performed any repairs or maintenance on Respondent's unit. The third section cited refers to the Association's right to deny access to

community facilities to an offending unit owner. The right to collect attorney's fees, referred to in subsection "F", is only mentioned as one of the costs that must be paid before an offending unit owner can have access to those facilities. Applying the legal rule above, the Panel will not read any of these provisions as making the Respondent liable for attorney's fees in a legal action to compel the Respondent to comply with the architectural rules.

The Complainant has not proven that Respondent has engaged in any affirmative action sufficient to constitute misconduct under Section 10B-13(d), nor has it shown that the governing documents clearly require an award of attorney's fees in this case. Therefore the Panel denies the motion for attorney's fees.

Order

Based on the evidence of record and the reasons stated above, it is ordered that Respondent repair the siding on her unit within sixty (60) days of this decision. If Respondent fails to meet the requirements of this order, Complainant may pursue any remedies available to it, including (to the extent permitted by Complainant's governing documents) repairing the siding and placing a lien on Respondent's property subject to reimbursement of the repair costs. The request for attorney's fees is denied. The County may also enforce this order pursuant to Section 10B-13(j).

Commissioners Charles Fleischer and Kevin Gannon concurred in this decision.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland, within thirty (30) days from the date of this Order, under the Maryland Rules of Procedure.

Douglas Shontz, Panel Chair
Commission on Common Ownership Communities